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No. 71-198

In the Supreme Court of the United States

OCTOBER TERM, 1971

BURNS INTERNATIONAL SECURITY SERVICES, INC.,
PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, *et al.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

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1. The Board found, *inter alia,* that petitioner Burns was a successor employer to Wackenhut, and thus violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing to recognize and bargain with the United Plant Guard Workers of America, which had been certified by the Board as the representative of a separate unit of guards at the Lockheed facility in Ontario, California. The Board further found that Burns violated the same provisions of the Act by failing to honor the contract between Wackenhut and the Union (182 NLRB No. 50, Pet.

App. 9–40). The court of appeals sustained the Board's first finding and enforced the portion of its order relating thereto, but declined to enforce the portion of its order requiring that the contract be honored (Pet. App. 1–8). The Board has filed a petition for a writ of certiorari to review the latter ruling. *National Labor Relations Board* v. *The William J. Burns, International Detective Agency, Inc., et al.*, No. 71–123, 1971 Term.[1] By the present petition, Burns seeks review of the court's other ruling.

2. Burns' petition raises two questions, neither of which warrants review by this Court.

a. Burns challenges the propriety of the Board's determination that a separate unit of guards is appropriate for collective bargaining at the Lockheed facility. The Board, however, has wide discretion in making unit determinations (see *Packard Motor Car Co.* v. *National Labor Relations Board*, 330 U.S. 485, 491), and the court below correctly held (Pet. App. 3–4) that the Board had not abused that discretion here.[2]

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[1] Burns has changed its name to Burns International Security Services, Inc. (Pet. in No. 71–198, p. 1, fn.).

[2] In the consent election agreement leading to the Union's certification, Wackenhut had stipulated that a unit confined to its plant-protection employees at the Lockheed facility was appropriate for collective bargaining purposes (Pet. App. 25, 32). After Burns took over the work, the guards at that facility remained an identifiable and distinct group, working in the same clearly defined geographic area, physically separated from their employer's other guards (Pet. App. 30; R. 22–24, 29, 40, 43–44). ("R." refers to the appendix to the briefs in the court below.) As under Wackenhut, the employees continued to be

National Labor Relations Board v. *Metropolitan Life Insurance Co.*, 380 U.S. 438 (Pet. 7), is distinguishable. The Court's conclusion that the Board had not sufficiently articulated the basis for its unit determination was prompted by the fact that the determination appeared to be inconsistent with determinations in similar cases. *Id.* at 442. No such inconsistency appears here.[3]

b. Burns also challenges the propriety of the Board's finding that Burns is a "successor" to Wackenhut. This presents essentially an evidentiary issue, which likewise does not warrent further review. Moreover, as the court of appeals correctly concluded (Pet. App. 5): "All of the important factors which the Board has used and the courts have approved are present in the instant case: 'continuation of the same types of product lines, departmental organization, employee identity and job functions.'" Both Burns and

directly supervised by a single supervisor, who had authority with respect to hiring and discharge and was required by Lockheed's contract to devote full time to his supervisory work there (R. 68–72, 98–99). The former Wackenhut guards, as a result of their prior bargaining history, were paid more than the other Burns employees in the area (R. 45–46, 99–100, 120–121). Finally, Burns unlawfully assisted the American Federation of Guards, Local 1, in organizing the guards at the Lockheed facility, and then recognized the AFG as the bargaining representative of such guards on the basis of a majority card showing in the separate Lockheed unit (Pet. App. 2, 12, 26–30, 32; R. 7–22, 25–29, 30–43, 46–50, 109–113).

[3] See, *e.g.*, *The William J. Burns International Detective Agency, Inc.*, 137 NLRB 1235, 1237; *Burns Detective Agency*, 110 NLRB 995, 996; *William J. Burns Detective Agency*, 47 NLRB 610, 612.

Wackenhut are nationwide organizations (Pet. App. 23; R. 57–58, 86–88); both performed the identical services at the same facility (Pet. App. 11, 30; R. 22–24, 29, 40, 43–44); the functions and responsibilities of Burns' supervisors were similar to those of their predecessors (R. 64–66, 68, 70–71, 98–99); and Burns commenced performance of the contract with 27 former Wackenhut employees out of its total complement of 42 (Pet. App. 11–12, 26).

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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SEPTEMBER 1971.

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